SBCivil Writ Petition No.68/1993

Shri Vardhman Stanakwasi Jain Shrawak Sangh, Mahamandir, Jodhpur v. Asstt.Commissioner, Devasthan Department, Jodhpur & Anr.

Date of Order :: 18th January, 2006

HON'BLE MR.JUSTICE GOVIND MATHUR

Mr. Om Mehta, for the petitioner.
Mr. B.L.Tiwari, Dy.Govt.Advocate.

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This petition for writ is directed against the order dated 3.11.1992 passed by Assistant Commissioner, Devasthan permitting the respondent No.2 to get the notice issued under Section 18(2) of the Rajasthan Public Trust Act, 1959 (hereinafter referred to as “the Act of 1959”) published in any daily newspaper having circulation in Jodhpur City.

The facts required to be noticed for adjudication of present writ petition are that the respondent No.2 preferred an application under Section 17 of the Act of 1959 for registration of a public trust. The Assistant Commissioner, Devasthan, Jodhpur on receiving the application invited objections by getting a public notice published in prescribed manner inviting objections. The notice was required to get published by the applicant respondent No.2, however, he failed to do so, therefore, the Assistant Commissioner, Devasthan under an order dated 23.8.1989 rejected the application submitted under Section 17 of

the Act of 1959. Being aggrieved by the order dated 23.8.1989 the respondent No.2 preferred an appeal under Section 20 of the Act of 1959 giving challenge to the order aforesaid. The appeal also stood rejected by the appellate authority i.e. the Commissioner, Devasthan by an order dated 21.9.1992. After dismissal of appeal the respondent No.2 submitted an application before the Assistant Commissioner, Devasthan to review and recall the order dated 23.8.1989 and to permit him to get the notice published as required under Section 18(2) of the Act of 1959. The application submitted by the applicant respondent No.2 was accepted by the Assistant Commissioner under the order impugned dated 3.11.1992, hence the instant petition for writ is preferred.

It is contended by the petitioner that the Assistant Commissioner after passing the order dated 23.8.1989 which was affirmed on merit by appellate authority became functus officio to recall its earlier order, as such the order dated 3.11.1992 deserves to be quashed being without jurisdiction.

A reply to the writ petition has been filed on behalf of the Assistant Commissioner, Devasthan as well as on behalf of the respondent No.2 stating therein that though the application preferred under Section 17 of the Act of 1959 was said to be rejected but in fact the proceedings initiated under Section 17

were kept pending and, therefore, the Assistant Commissioner was having jurisdiction to recall its earlier order and to permit the respondent No.2 to get the notice published as prescribed under Section 18(2) of the Act of 1959.

Heard counsel for the parties and perused record of the case.

The Assistant Commissioner, Devasthan by order dated 23.8.1989 rejected the application submitted by the respondent No.2 on being failed to get the notice published in accordance with Section 18 (2) of the Act of 1959. The respondent No.2 being aggrieved by the order dated 23.8.1989 preferred an appeal under Section 20 of the Act of 1959 before the Commissioner, Devasthan which too was rejected on merits by order dated 21.9.1992. In view of the orders dated 23.8.1989 and 21.9.1992 it cannot be said that the proceedings initiated under Section 17 of the Act of 1959 were kept pending before the Assistant Commissioner. In fact an appeal under Section 20 of the Act of 1959 could be maintained only on dismissal of an application under Section 17. In view of it the stand of the respondent that the proceedings under Section 17 of the Act of 1959 were kept pending is bereft of truth. Once the order passed by the original authority stood confirmed by the appellate authority on merits then there was no occasion for the original

authority i.e. Assistant Commissioner, Devasthan to recall the original order.

Hon'ble Supreme Court in similar circumstances in the case of State of Maharashtra and another v. Prabhakar Bhikaji Ingle, reported in AIR 1996 SC 3069, held that once a higher court confirms an order then the judicial discipline requires for not reviewing the original order by the original court or tribunal, as the case may be. The relevant portion of the judgment referred above reads as under:-

> "But in this case, when the self-same main order was confirmed by this Court, the question arises whether the Tribunal has had power under Order 47, Rule 1, CPC or any other appropriate provision under the Tribunals Act to review the orders passed by it and confirmed by this Court by refusing to grant leave. We find that the exercise of the review power is deleterious to the judicial discipline. Once, this Court has confirmed the order passed by the Tribunal, that becomes final. Therefore, the Tribunal cannot have any power to review the previous order which stands merged with the order passed by this Court."

In the instant matter the order dated 23.8.1989 stood confirmed by the appellate authority on merits, therefore, the Assistant Commissioner, Devasthan erroneously accepted the application to review and recall the order dated 23.8.1989. The order

impugned, therefore, is illegal and deserves to be quashed.

The writ petition is accordingly allowed. The order impugned dated 23.8.1989 passed by the Assistant Commissioner, Devasthan is hereby quashed.

No order as to costs.

(GOVIND MATHUR),J.

kkm/ps.